

STEVEN T. JAFFE, ESQ.
Nevada Bar No. 7035
sjaffe@lawhjc.com
JASON R. WIGG, ESQ.
Nevada Bar No. 7953
jwigg@lawhjc.com

HALL JAFFE & CLAYTON, LLP

7425 PEAK DRIVE
LAS VEGAS, NEVADA 89128
(702) 316-4111
FAX (702) 316-4114

*Attorneys for Central Washington Asphalt, Inc.
and Donald Hannon*

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA**

WILLIAM TERRELL, Guardian Ad Litem for
QUENTIN SLAGOWSKI, a minor, ANIKA
SLAGOWSKI, a minor, and ROWAN
SLAGOWSKI, a minor; the ESTATE OF JON
MICHAEL SLAGOWSKI, by and through its
personal representative, PATRICIA DEAN,

Plaintiffs,

vs.

CENTRAL WASHINGTON ASPHALT, INC.,
and DONALD HANNON,

Defendants.

CASE NO. 2:11-cv-00142-APB-VCF

CONSOLIDATED WITH:
CASE NO. 2:12-cv-01435-APB-VCF

CONSOLIDATED WITH:
CASE NO. 2:12-cv-01475-APB-VCF

AND ALL RELATED MATTERS.

MOTION FOR SUBSTITUTION OF PARTY

Third-Party Plaintiffs Central Washington Asphalt ("CWA") and Donald Frank Hannon ("Hannon," together with CWA, the "CWA Third-Party Plaintiffs"), pursuant to Fed. R. Civ. P. 25(a), hereby move this Court for an Order substituting the Estate of Mitchell Forrest Zemke, by and through its personal representative Kathryn Zemke (the "Estate"), for Third-Party Defendant

1 Mitchell Zemke (“Mr. Zemke”) as a party to this action. In support of this motion, the CWA
2 Third-Party Plaintiffs state as follows:

3 1. On May 17, 2012, the CWA Third-Party Plaintiffs¹ filed a Third-Party Complaint
4 against Zemke and others [Doc. No. 44], and on October 17, 2014 filed an Answer to Amended
5 Complaint and Third-Party Complaint [Doc. No. 345] alleging that Mr. Zemke and the other
6 Third-Party Defendants were negligent in the manner in which they operated their respective
7 vehicles thereby causing or contributing to the accident that is the subject of this action. The
8 CWA Third-Party Plaintiffs seek a judgment of contribution and/or indemnity from Mr. Zemke
9 for any and all damages and/or economic losses that Plaintiffs may recover against the CWA
10 Third-Party Plaintiffs.

11 2. On February 26, 2016 Kathryn Zemke filed a Statement Noting Counterclaimant
12 Mitchell Zemke’s Death [Doc. No.500] informing this Court that Mr. Zemke had passed away in
13 December of 2015².

14 3. On or about February 29, 2016 Kathryn Zemke was appointed personal
15 representative of the Estate of Mr. Zemke. *See* Statement of Informal Appointment of Personal
16 Representative in Intestacy signed February 29, 2016 and entered March 4, 2016; and Letters of
17 Administration and Oath entered in Case No. CV42-16-0698 in the District Court of the Fifth
18 Judicial District of the State of Idaho, in and for the County of Twin Falls, Magistrate Division
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22 ¹ James Wentland and Jerry Goldsmith were also included as Third-Party Plaintiffs in the Third-Party
Complaint. Both Wentland and Goldsmith were dismissed from this action by the Order entered by the
Honorable Andrew P. Gordon on March 7, 2016 [Doc. No. 504].

23 ² The Statement Noting Counterclaimant Mitchell Zemke’s Death lists the date of death as December 10,
24 2015. Upon information and belief, the date of death was actually December 12, 2015.

1 signed February 29, 2016 and entered March 4, 2016 (collectively, the “Estate Filings”). Copies
2 of the Estate Filings are attached hereto as Exhibit A.

3 4. By Order entered on May 27, 2016 [Dkt. # 511], the deadline to file a motion for
4 substitution of party to substitute the Estate was extended up and including June 30, 2016.³

5
6 5. The CWA Third-Party Plaintiffs’ claims are not extinguished by the death of Mr.
7 Zemke. *See* Nev. Rev. Stat. § 41.100(1) (“...no cause of action is lost by reason of the death of
8 any person, but may be maintained by or against the person’s executor or administrator”), and
9 Nev. Rev. Stat. § 41.100(2) (“[i]n an action against an executor or administrator, any damages
10 may be awarded which would have been recovered against the decedent if the decedent had
11 lived”).

12 6. The other parties to this action will not be prejudiced in any way by the
13 substitution of the Estate as the substitution in name only and no additional act is necessary for
14 the CWA Third-Party Plaintiffs to prosecute their case.

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21 ³ As set forth in the Stipulation and [Proposed] Order to Extend Deadline To File Motion for Substitution
22 of Party [Dkt. # 509], CWA Third-Party Plaintiffs and Third-Party Defendants and Counterclaimant
23 Mitchell Forrest Zemke had reached an agreement in principle to resolve all claims. The agreement in
24 principle remains, but certain issues remain unresolved. While the CWA Third-Party Plaintiffs believe
that the agreement will ultimately result in the dismissal of Mr. Zemke and the Estate, they must
nevertheless file this motion out of an abundance of caution and to preserve their rights until the
agreement has been finalized.

1 WHEREFORE, the CWA Third-Party Plaintiffs respectfully request that this Court
2 substitute the Estate of Mitchell Forrest Zemke, by and through its personal representative
3 Kathryn Zemke, as Third-Party Defendant in this action.

4 Dated this 20th day of June, 2016.

5 HALL JAFFE & CLAYTON

6 By: /s/ Jason R. Wigg
7 Steven T. Jaffe, Esq.
8 Nevada Bar No. 7305
9 Jason R. Wigg, Esq.
10 Nevada Bar No. 7953
11 7425 Peak Drive
12 Las Vegas, NV 89128
13 (702) 316-4111
14 *Attorneys for Central Washington Asphalt,*
15 *Inc. and Donald Hannon*

16 IT IS SO ORDERED.

17 

18 UNITED STATES MAGISTRATE JUDGE
19 DATED: 7-21-2016
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CERTIFICATE OF SERVICE

Pursuant to Rule 5(b) of the Federal Rules of Civil Procedure, I hereby certify under penalty of perjury that I am an employee of HALL JAFFE & CLAYTON, LLP, and that on the 30th day of June 2016 the foregoing **MOTION FOR SUBSTITUTION OF PARTY** was served upon the parties via the Court's e-filing and service program to the following:

Timothy G. Tietjen, Esq.
ROUDA, FEDER & TIETJEN
44 Montgomery St., Suite 4000
San Francisco, CA 94104

and

Timothy R. O'Reilly, Esq.
O'REILLY LAW GROUP
325 S. Maryland Parkway
Las Vegas, NV 89101
Attorney for Plaintiffs

Jason O. Runckel, Esq.
O'CONNOR RUNCKEL & O'MALLEY
1277 Treat Blvd, Suite 810
Walnut Creek, California 94597

and

Nadia Von Magdenko, Esq.
VON MAGDENKO & ASSOCIATES
624 S. 9th Street
Las Vegas, NV 89101
*Attorneys for Plaintiff Kathryn Zemke and
Counter-Claimant, Mitchell Forrest Zemke*

Stephen H. Rogers, Esq.
Charles A. Michalek, Esq.
ROGERS, MASTRANGELO, CARVALHO &
MITCHELL
300 S. Fourth Street, Suite 710
Las Vegas, NV 89101
*Attorneys for Third-Party Defendant
Mitchell Forest Zemke*

Eric Kuwana, Esq. (Pro Hac)
Jeffrey C. Grady, Esq. (Pro Hac)
KATTEN MUCHIN ROSENMAN, LLP
550 S. Tryon Street, Suite 2900
Charlotte, NC 28202-4213
*Co-Counsel for Central Washington
Asphalt, Inc., Donald Hannon, James
Wentland and Jerry Goldsmith*


Bruce Scott Dickinson, Esq.
Michael Hottman, Esq.
STEPHENSON & DICKINSON
2820 W. Charleston Blvd., Suite B-19
Las Vegas, NV 89102
*Attorneys for Third-Party Defendants
Chip Fenton, Fenton Trucking, LLC*

/s/ Barbara Gracey
An Employee of HALL JAFFE & CLAYTON, LLP

EXHIBIT A

EXHIBIT A

Signed: 3/4/2016 01:35 PM

FILED By:  Deputy Clerk
Fifth Judicial District, Twin Falls County
Kristina Glascock, Clerk of the Court

David W. Gadd (ISB #7605)
WORST, FITZGERALD & STOVER, PLLC
905 Shoshone Street North
P.O. Box 1428
Twin Falls, Idaho 83303-1428
Telephone: (208) 736-9900
Facsimile: (208) 736-9929
dwg@magicvalleylaw.com

Attorneys for Kathryn Zemke

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS
MAGISTRATE DIVISION

In the Matter of the Estate of

MITCHELL FORREST ZEMKE,
Deceased.

Case No. CV42-16-0698

**STATEMENT OF INFORMAL
APPOINTMENT OF PERSONAL
REPRESENTATIVE IN INTESTACY**

Upon consideration of the *Application for Informal Appointment of Personal Representative in Intestacy* filed by Kathryn Zemke, the Court finds that:

1. The Application is complete.
2. Applicant has made an oath that the statements contained in the Application are true to the best of Applicant's knowledge and belief.
3. Applicant appears from the Application to be an interested person as defined by the Idaho Uniform Probate Code.
4. The Decedent, Mitchell Forrest Zemke, died December 12, 2015, at the age of thirty-six (36) years.

**STATEMENT OF INFORMAL APPOINTMENT OF
PERSONAL REPRESENTATIVE IN INTESTACY – 1**

5. On the basis of the statements in the Application, venue is proper.
6. Any required notice has been given or waived.
7. On the basis of the statements in the Application, no personal representative has been appointed in this state or elsewhere.
8. It appears from the application that the time limit for informal probate and appointment has not expired.
9. On the basis of the statements in the Application, the Decedent died intestate.
10. The Application does not indicate the existence of a possible unrevoked testamentary instrument which may relate to property subject to the laws of this state, and no such instrument has been filed for probate in this Court.
11. Based on the statements in the Application, the person whose appointment as personal representative is sought is qualified to act as personal representative and has priority entitling said person to the appointment.
12. Bond is not required.
13. The applicable time period within which no action can be taken on an application for informal probate has elapsed.
14. The Decedent is survived by the following heirs:

<u>NAME and ADDRESS</u>	<u>RELATIONSHIP</u>	<u>AGE</u>
Kathryn Zemke 246 Madison St. Twin Falls, ID 83301	Spouse	Over 21
Nathan Michael Zemke 246 Madison St. Twin Falls, ID 83301	Son	9

NOW, THEREFORE, IT IS ORDERED AND DECREED that:

1. The Decedent died intestate and is survived by the issue listed above.
2. Under and by virtue of the laws of succession of the State of Idaho, the estate of the Decedent vests and is to be distributed to Decedent's spouse, Kathryn Zemke, and minor son, Nathan Michael Zemke.
3. Kathryn Zemke is hereby appointed personal representative of the estate of Mitchell Forrest Zemke, to act without bond.
4. Upon qualification and acceptance, letters of administration shall be issued.
5. Notice shall be given in accordance with I.C. § 15-3-705.

SO ORDERED this _____ day of _____, 2016.

Signed: 2/29/2016 05:03 PM



MAGISTRATE JUDGE

CLERK'S CERTIFICATE OF SERVICE

The undersigned certifies that on the 4 day of March, 2016, she/he caused a true and correct copy of the foregoing instrument to be served upon the following persons in the following manner:

Kathryn Zemke
c/o David W. Gadd
WORST, FITZGERALD & STOVER, PLLC
P.O. Box 1428
Twin Falls, ID 83303-1428

- ☐ U.S. Mail
- ☐ Facsimile: (208) 736-9900
- ☐ Hand Delivery
- ☒ E- Mail: *dwg@magicvalleylaw.com*
- ☐ Electronic Court Filing

Nathan Michael Zemke
c/o Kathryn Zemke
246 Madison St.
Twin Falls, ID 83301


- ☒ U.S. Mail
- ☐ Facsimile
- ☐ Hand Delivery
- ☐ E- Mail
- ☐ Electronic Court Filing

CLERK OF THE COURT

Signed: 3/4/2016 01:36 PM

By: *Joan Zerkman*
Deputy Clerk

Signed: 3/4/2016 02:43 PM

FILED By:  Deputy Clerk
Fifth Judicial District, Twin Falls County
Kristina Glascock, Clerk of the Court

David W. Gadd (ISB #7605)
WORST, FITZGERALD & STOVER, PLLC
905 Shoshone Street North
P.O. Box 1428
Twin Falls, Idaho 83303-1428
Telephone: (208) 736-9900
Facsimile: (208) 736-9929
dwg@magicvalleylaw.com

Attorneys for Kathryn Zemke

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS
MAGISTRATE DIVISION

In the Matter of the Estate of

MITCHELL FORREST ZEMKE,
Deceased.

Case No. CV42-16-0698

**LETTERS OF ADMINISTRATION AND
OATH**

Kathryn Zemke was duly appointed and qualified by the Court as personal representative of the estate of the Decedent, Mitchell Forrest Zemke, with all authority pertaining thereto.

Administration of the estate is unsupervised.

These letters are issued to evidence the appointment, qualification, and authority of said personal representative.

WITNESS: Honorable Roger B. Harris, Magistrate of the
above Court, with the seal thereof affixed the _____ day of _____, 2016.

Signed: 2/29/2016 05:04 PM


MAGISTRATE JUDGE

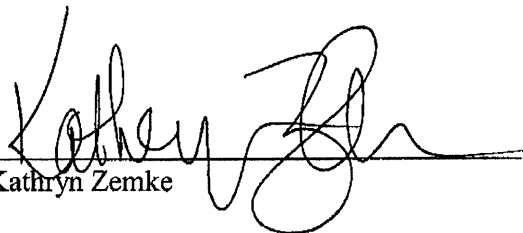
OATH

STATE OF IDAHO)
) ss.
County of Twin Falls)

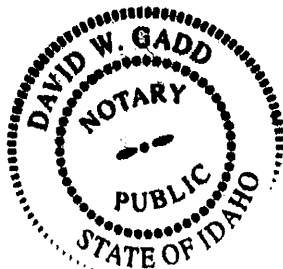
Kathryn Zemke, being first duly sworn on oath, deposes and says:


I HEREBY ACCEPT the duties as Personal Representative of the estate of Mitchell Forrest Zemke, and I do hereby solemnly swear that the duties of personal representative shall be performed according to law.

DATED this 26th day of February, 2016.


Kathryn Zemke

SUBSCRIBED AND SWORN to before me this 26th day of February, 2016.




Notary Public for Idaho
Residing at: Twin Falls, Idaho
Commission Expires: April 12, 2018

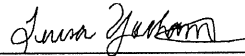
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 4 day of March, 2016, I caused a true and correct copy of the foregoing document to be served by the method indicated below, and addressed to the following:

David W. Gadd
WORST, FITZGERALD & STOVER, PLLC
P.O. Box 1428
Twin Falls, ID 83303-1428

☐ U.S. Mail
☐ Facsimile: (208) 736-9900
☐ Hand Delivery
☒ E-Mail: *dwg@magicvalleylaw.com*

Signed: 3/4/2016 02:44 PM



Deputy Clerk